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FEDERAL COMMUNICATIONS COMMISSION
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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals
445 12th Street SW
Washington, DC 20554

Re: WC Docket No. 02-150

Dear Ms. Dortch:

Birch Telecom of the South, Inc. ("Birch") would like to take this opportunity to respond to various Birch-raised issues addressed by BellSouth in either its reply affidavits or recent *ex partes* filed in the above-referenced proceeding.

"Phantom DSL USOC" Issues

In his confidential Reply Affidavit, Mr. Ainsworth attempts to address customer-specific scenarios provided by Birch as evidence of customers onto whose accounts a "phantom DSL USOC" was placed. In ¶ 16 of Mr. Ainsworth's reply affidavit, he references *** **REDACTED** *** of the customer examples provided by Birch who had DSL USOCs on their accounts "as a result of an order from an ISP." It is fascinating that in each of the examples investigated by Mr. Ainsworth and included in Exhibit "KLA-3" to his affidavit, the DSL USOC on the customer's account resulted from an order from one particular ISP: BellSouth's retail DSL service unit.

Mr. Ainsworth also attempts to respond to the example provided by Birch of one multi-location customer who had a "phantom DSL USOC", on the main billing telephone number, of 18 of the customer's locations in the southeast. Mr. Ainsworth's explanation is that the DSL USOC was placed on the customer's accounts "after a conversation with the end user customer about the Internet access service." (Ainsworth Reply Aff. at ¶ 18). Mr. Ainsworth's words are very carefully chosen. Not once is there an indication that the customer requested DSL service. Rather, the DSL orders resulted after a "conversation" with the customer. In fact, the DSL orders were placed

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without final approval from the customer, by BellSouth's own admission (*Id.*), supporting Birch's contention that BellSouth's practice results in virtually cramming its customers. It is uncanny that for 17 out of the 18 accounts which had the "phantom DSL USOC" added, based on BellSouth's information, the DSL orders were placed by the same ISP: BellSouth's retail DSL service unit. (*Id.* at Exhibit "KLA-4").

BellSouth would like to blame other NSP's or ISP's for the existence of a "phantom DSL USOC" which a customer ordered and the other NSP or ISP has failed to conclude the installation, or for failing to issue appropriate cancellation orders of DSL service, when a customer no longer wants to retain such service.[1]. However, BellSouth's own data, provided in Mr. Ainsworth's confidential Reply Affidavit, illustrates that the vast majority, 96% of the examples addressed by BellSouth, of the "phantom DSL USOC" problems exist due to the practices of BellSouth's retail DSL unit. The "phantom DSL USOC" problem is not with other service providers, but rather only with BellSouth, contrary to Mr. Ainsworth's claims that the "phantom DSL USOC" "has nothing to do with misconduct on BellSouth's part." (Ainsworth Reply Aff. at ¶ 14). However, in the multi-location customer example referred to above, BellSouth admitted that it processed an order for DSL for the customer, without the customer's final approval. Surely this Commission does not approve of such misconduct by any service provider, let alone one that maintains dominant market power.

BellSouth's explanations thus far simply do not add up, nor have they quantified the "phantom DSL USOC" problem. BellSouth continues to maintain that a very few number of orders are affected by the "phantom" problem, but has yet to disclose how many retail accounts are plagued by the "phantom USOC" and are therefore potentially affected when converting to a CLEC. Mr. Ainsworth continues to provide percentages to this Commission based on auto-clarifications which, as Birch has previously asserted, does not accurately reflect the true universe of orders that have been and can be affected during conversion to a CLEC. BellSouth clearly has this data, but has yet to disclose it. Specifically, at ¶ 28 of Mr. Ainsworth's Reply Affidavit, BellSouth's methodology for calculating its DSL subscribership is revealed. According to Mr. Ainsworth, BellSouth accounts for its DSL subscribers by "tallying the number of external customers paying for DSL service." (Ainsworth Reply Aff. at ¶ 28). Apparently, the "relatively few" "phantom DSL USOCs" that are on customer accounts, but are not being billed to the customer, are not included within BellSouth's overall DSL tally. This explanation seems to indicate that BellSouth knows the exact number of its customers whose accounts contain the "phantom DSL USOC," but are not being billed for it, by simply excluding the number BellSouth includes within its overall DSL tally. Birch must continue to raise the question: how many retail accounts contain a "phantom DSL USOC" for which the customer is not being billed? BellSouth clearly knows this number but will not reveal that number to Birch or to this Commission, choosing instead to manipulate ordering data to show that "the problem about which the CLECs complain is not significant." (*Id.* at ¶ 22).

BellSouth's own data proves that its own retail DSL unit's practices are the root cause of the "phantom DSL USOC" problem. Unfortunately, no CLEC or regulatory body has any insight into BellSouth retail practices and policies save for the explanations provided to regulators by wholesale employees of BellSouth. Presumably, when BellSouth's retail practices are called into question on a competition-affecting matter, such as the "phantom DSL USOC" issue, commented on by at least six different CLECs in connection with each of the most recent BellSouth 271 Applications before

[1] *See* BellSouth's March 19, 2002 *Ex Parte* in CC Docket 02-35 and Mr. Ainsworth's Reply Affidavit in WC Docket No. 02-150 at ¶¶ 14-15.

the FCC, evidence of BellSouth's retail unit's policies and practices will be provided directly from that organization. Further, to Birch's knowledge, no internal documentation outlining BellSouth's retail practices and policies has been provided in conjunction with any CLEC concern raised in this proceeding.

Before it completely closes the book on the "phantom DSL USOC" issue, and before this Commission accepts BellSouth's circular rhetoric related thereto, Birch strongly urges the Commission to uncover the answers raised herein before it grants 271 approval to BellSouth for the instant application. Specifically, Birch requests the answers to the following:

1. How many BellSouth retail accounts contain the "phantom DSL USOC," for which the customer is not being billed?

2. What are the BellSouth retail DSL unit's practices and policies for ordering DSL to be placed on a customer's account? What BellSouth internal documentation exists to support such practices and policies?

3. Is it a BellSouth-approved practice to place a DSL USOC onto a customer's account, prior to gaining the customer's final approval?

4. Are representatives from BellSouth's retail DSL unit compensated for each DSL order it places?

5. With respect to Question Number 4, is the representative compensated although the customer is never billed for the service?

Pending Service Orders

BellSouth's attempt to clarify Birch's "mysterious PSO" examples is another failure on BellSouth's part. That is, with respect to the information provided in confidential Exhibits "KLA-6 & KLA-7" to Mr. Ainsworth's Reply Affidavit, Birch continues to assert different information based on Birch's interactions with both customers. For example, in "KLA-7," the customer indicates that while voice mail was requested, no request was made for BellSouth's "Complete Choice." Perhaps Birch's statements regarding this customer were not complete in its original comments, but it still does not address the fact that a pending service order existed at conversion, for a service not requested by the customer.

Additionally, for the ***REDACTED*** example in confidential Exhibit "KLA-6," a conversation on August 2, 2002 between T.J. Sauder of Birch and the owner of the business, confirms that this customer **never** requested DSL service and re-emphasized the customer's position that he told the BellSouth representative that he had no interest in DSL service. While BellSouth relies on its internal documentation of a customer service representative, presumably compensated for selling DSL service, Birch maintains the same information, retrieved from the customer, provided in its initial comments in the instant proceeding, that the customer **never** requested DSL service from BellSouth or any other service provider. Note that the service provider at the root of this example is again BellSouth's retail DSL service unit.

It continues to concern Birch that two days after Birch accessed this customer's CSR, the customer apparently called BellSouth to verify some account information and wound up with a "phantom DSL USOC" pending service order on the customer's account. What would cause BellSouth to add DSL onto the customer' account, after the customer indicated his intent to convert to Birch, and without customer approval? If the intent was to impede a smooth migration from BellSouth to Birch – BellSouth accomplished its purpose. What is further concerning to Birch, as discussed in its initial comments, is the fact that BellSouth's retail units seem to have free access to add pending service orders, with or without customer consent, during the pendency of conversion to a CLEC. In fact, BellSouth's response to the Commission's CPNI concerns in an August 14 *Ex Parte* in this proceeding, coupled with this specific customer example presented by Birch, further supports Birch's contention that a breach between BellSouth's wholesale and retail units is occurring – a breach that is affecting customer conversions.

Specifically, in its August 14 *Ex Parte* BellSouth indicates that it "was not able to develop a mechanical solution to segregate the retail and wholesale pending orders, since the wholesale service representative needs to be able to view all orders for both retail and wholesale. Instead, BellSouth has put a series of practices related to CPNI in place that prohibit the retail service representative from viewing a CLEC pending order." (BellSouth August 14, 2002 *Ex Parte* in WC Docket No. 02-150). This is an alarming revelation to Birch. Unfortunately, it is a revelation that only leads to further questions and no answers. What are these "practices" referred to by BellSouth? Based on the evolution of ***REDACTED*** eventual conversion, these "practices" of BellSouth must be called into serious question. The customer made a clear choice to convert to Birch and the customer's CSR was retrieved by Birch to ensure no pending service orders were present prior to submitting the order for actual provisioning. How, then, does a pending service order, for "phantom DSL" no less, **never** requested or approved by the customer, appear on the customer's CSR within three days of Birch's last retrieval of the CSR? Is this just a coincidence or have BellSouth's "practices" referenced above failed that miserably?

Further, as recent as this week, a Birch customer in Georgia, who converted to Birch on August 16, 2002, contacted Birch post conversion to report "No Dial Tone." Upon review of the account activity by Birch's Repair Operations Center, BellSouth retail issued two orders for suspension of this customer's account on August 19, resulting in this **restaurant's** loss of dial tone. BellSouth's LCSC assisted Birch in restoring the customer's dial tone, but only after the customer's first impression of Birch was tainted. This customer undoubtedly will feel little or no stability with Birch at this point. If BellSouth's above-referenced "practices" are so effective, how can this kind of event occur, particularly after the customer had successfully converted to Birch? BellSouth's "practices" **must** be investigated and scrutinized fully to uncover why these examples occur with such frequency.

With the aggregate of the wholesale/retail violations reported by Birch and multiple other CLECs within the context of BellSouth winback tactics and impediments to conversion transactions, Birch strongly urges this Commission to investigate BellSouth's CPNI practices that it has allegedly put into place to serve as an appropriate barrier between BellSouth's retail representatives and CLEC end user orders. Make no mistake about it, in the wake of RBOC advertising and press releases regarding the dramatic negative effect of UNE-P on the Bell companies' earnings and resultant stock prices, Birch has no reason to believe that BellSouth's retail employees, direct competitors to UNE-P providers like Birch, have anything but disdain for the proliferation of competition and the taking of "their" customers away from BellSouth. It is therefore imperative that this Commission unravels BellSouth's practices and policies surrounding its retail organization's access to and manipulation of CLEC end user orders, prior to any additional 271 rewards being bestowed upon BellSouth. Competition will be forever compromised in the BellSouth region if BellSouth's retail organization can access and utilize CLEC customer information for BellSouth's own gain.

BAPCO Issues

In Birch's initial comments in this proceeding, it unveiled a partial migration directory listing issue that affected CLEC partial migration orders adversely, until an emergency release was implemented by BellSouth on June 28, 2002. In his reply affidavit, Mr. Milner states that Birch did not adequately proof its customers' directory listings, which is why some were omitted from the published books. (Milner Reply Aff. at ¶ 11). To fully understand the import of Mr. Milner's statement, the directory listing review process utilized by BellSouth for its CLEC customers must be discussed. To Birch's knowledge, BellSouth's only process for directory listing review is to provide paper directory listing proofs to Birch, only upon request and at the rate of up to $500 per proof, for Birch to manually identify on a listing-by-listing basis, whether the customer's directory listing corresponds correctly with the order produced by Birch. BellSouth's continued reliance on manually intensive processes does nothing to aid its CLEC customers' efficiency. If Birch did not adequately proof its customers' directory listings, blame it on the archaic review process endorsed by BellSouth. It would be interesting to know if BellSouth retail utilizes the same process offered to CLECs to proof its directory listings.

Compare BellSouth's extremely manual process for directory listing proofs to the process utilized by CLECs in the SBC-SWBT territory. In the SWBT region, Birch is provided a daily electronic update of its customers' directory listings to compare against Birch's ordering database for accuracy. In addition, SBC has deployed a web-based process by which a CLEC can access a directory listing proof associated with a specific telephone number to ensure the accuracy of the listing. Each of these processes saves an enormous amount of Birch resource to ensure its customers' directory listings are accurate before publication.

Mr. Milner also references the number of Birch customers who were ultimately omitted from the white pages. (*Id.*) What Mr. Milner fails to reveal is the manpower hours put in by Birch to prevent multiple other customers from suffering the same fate as the omitted customers. Mr. Milner's analysis also does not address the number of non-Birch CLEC customers who were affected by the partial migration directory listing problem. In its August 9, 2002 *Ex Parte* submitted in this proceeding, BellSouth admitted that the partial migration directory listing problem was not Birch-specific. (*See* BellSouth Response to FCC Question #7, August 9, 2002 *Ex Parte*). Mr. Milner's analysis, therefore, is grossly incomplete. That is, it is quite probable that other CLECs that perform greater volumes of partial migrations would likely be more impacted than the numbers of Birch's omitted customers, purely due to a greater level of partial migration activity. While BellSouth's statement that no CLEC other than Birch has complained to BAPCO about the partial migration problem may be true as of this date (*Id.*), it is likely because CLECs other than Birch have had just over a month to digest the impact of the problem. Given BellSouth's manual directory listing review process, it is not surprising. Further, the fact that no other CLEC has complained to BAPCO to date is no excuse for BellSouth's failure to notify its wholesale CLEC customers of the potential impact to their customers converted via partial migration. It is difficult, if not impossible, to complain about a problem of which you are unaware. Without Birch's specific inquiries within the Change Control Process, it is doubtful that BellSouth would have ever revealed the reason for the emergency release on June 28, 2002.

Birch would be negligent if it did not address the validity of its assertions that SBC's directory listing affiliate's legacy systems are included under the purview of SBC's Change Management Process. As Mr. Stacy correctly identified in his reply affidavit, SBC's affiliate's legacy systems are technically not included under the purview of Change Management. (Stacy Reply Aff. at ¶ 109). In fact, Birch was mistaken that SBC's separate affiliate's legacy systems for white page listings is included within Change Management. Rather, SBC dedicates and houses white page directory listing support teams within SBC's wholesale organization, employed directly by SBC. Specifically, SBC's ALPSS/LIRA system that processes and edits white page directory listings is *included as one of* SBC's *process flows under the purview* of Change Management. CLECs are made aware of all CLEC impacting system changes or edits that may occur on the ALPSS/LIRA system through a Change Management Process 12-month legacy systems schedule. It just seems logical that system changes that will possibly affect CLEC customers would be identified to CLECs up front, rather than treating such changes or updates as secretive until the 11th hour, as is the case with BAPCO. The fact that SBC includes the process flow associated with the ALPSS/LIRA system as part of its Change Management commitments, as well as its team of dedicated personnel within the wholesale organization, illustrates the different approaches taken by SBC and BellSouth with respect to its wholesale customers. If BellSouth would even take the small step of incorporating the directory listing system, "order to book," process flow within Change Control, it would be a step in the right direction.

Pricing Issues

Birch is pleased that BellSouth has revised its policy regarding the inclusion of UNE rates found in BellSouth's SGATs into non-SGAT Interconnection Agreements, even prior to state commission final approval. (*See* BellSouth August 15, 2002 *Ex Parte*: WCDocket No. 02-150 at 5-6). However, what BellSouth's revised policy does not address is the fact that some of these rates have been in place in SGATs for a good period of time, and CLECs such as Birch have been required to pay higher UNE rates, strictly due to an internal anti-competitive BellSouth policy. Birch requests that any CLEC be able to take advantage of any such rates included within an SGAT, through amendment, with a retroactive effective date to the date such rate was first available. To date, the only retroactive provisions applicable for UNE rates in Birch's current Interconnection Agreement favor BellSouth's interests.

Please do not hesitate to contact the undersigned with any additional questions.

Sincerely,

Rose M. Henry RF

Rose Mulvany Henry
Director of Regulatory & Regulatory Counsel
Birch Telecom of the South, Inc.
(816) 300-3731